

# Adopted by House 4-11-2013

SB265 H JUD AM 4-9 #1

The Committee on the Judiciary moves to amend the bill on page three, following the enacting section, by striking out the remainder of the bill and inserting in lieu thereof the following language:

1 **"ARTICLE 5. AUTHORIZATION FOR DEPARTMENT OF HEALTH AND HUMAN**  
2 **RESOURCES TO PROMULGATE LEGISLATIVE RULES.**

3 **§64-5-1. Bureau for Public Health.**

4 (a) The legislative rule filed in the State Register on August  
5 31, 2012, authorized under the authority of section four, article  
6 one, chapter sixteen, of this code, modified by the Department of  
7 Health and Human Resources to meet the objections of the  
8 Legislative Rule-Making Review Committee and refiled in the State  
9 Register on January 10, 2013, relating to the Department of Health  
10 and Human Resources (reportable diseases, events and conditions, 64  
11 CSR 7), is authorized with the following amendments:

12 On page twenty-four, subsection 9.1., by striking out the  
13 words "the reporting" and inserting in lieu thereof the words "the  
14 access";

15 On page twenty-five, subsection 9.2., by striking out the  
16 words "be reported" and inserting in lieu thereof the words "be  
17 made available";

1           On page twenty-five, subsection 9.2., by striking out the  
2 words "the reporting" and inserting in lieu thereof the words "the  
3 access";

4           On page twenty-five, subsection 9.2., after the word  
5 "activities" by inserting the following: "consistent with the  
6 mission of the bureau. The responsibility for communication with  
7 healthcare facilities regarding data collection, data quality and  
8 completeness rests with the Office of Epidemiology and Prevention  
9 Services within the Bureau for Public Health";

10          And,

11          On page twenty-five, by striking out all of subsection 9.3.  
12 and renumbering the remaining subsection.

13          (b) The legislative rule filed in the State Register on June  
14 29, 2012, authorized under the authority of section four, article  
15 one, chapter sixteen, of this code, modified by the Department of  
16 Health and Human Resources to meet the objections of the  
17 Legislative Rule-Making Review Committee and refiled in the State  
18 Register on November 15, 2012, relating to the Department of Health  
19 and Human Resources (general sanitation, 64 CSR 18), is authorized  
20 with the following amendment:

21          On page three, subdivision 2.13, by removing the period and  
22 inserting the following, "Bed and Breakfast Inn."

23          (c) The legislative rule filed in the State Register on August  
24 27, 2012, authorized under the authority of section five, article

1 seven, chapter sixteen, of this code, relating to the Department of  
2 Health and Human Resources (Grade A pasturized milk, 64 CSR 34), is  
3 authorized with the following amendment:

4 On page four, subdivision 2.1.i.1, by striking everything  
5 after the word "sold" and inserting in lieu thereof the following:  
6 "Unpasteurized milk produced in West Virginia may be sold, provided  
7 that said unpasteurized milk is conspicuously labeled as  
8 'Unpasteurized Raw WV Milk'."

9 (d) The legislative rule filed in the State Register on August  
10 31, 2012, authorized under the authority of section one, article  
11 eleven, chapter sixteen, of this code, modified by the Department  
12 of Health and Human Resources to meet the objections of the  
13 Legislative Rule-Making Review committee and refiled in the State  
14 Register on January 10, 2013, relating to the Department of Health  
15 and Human Resources (fees for services, 64 CSR 51), is authorized  
16 with the following amendment:

17 On page eleven, subdivision 9.7, after the word "emergency",  
18 by inserting a period and removing the underscored words "or as a  
19 relevant factor associated with the provision of services and may  
20 include but is not limited to, supply shortages, federal or other  
21 funding restrictions of policy changes impacting the ability to  
22 provide services".

23 (e) The legislative rule filed in the State Register on  
24 October 11, 2012, authorized under the authority of section four,

1 article one, chapter sixteen, of this code, relating to the  
2 Department of Health and Human Resources (regulation of opioid  
3 treatment programs, 64 CSR 90), is repealed.

4 (f) The legislative rule filed in the State Register on August  
5 27, 2012, authorized under the authority of section four, article  
6 one, chapter sixteen, of this code, modified by the Department of  
7 Health and Human Resources to meet the objections of the  
8 Legislative Rule-Making Review Committee and refiled in the State  
9 Register on January 10, 2013, relating to the Department of Health  
10 and Human Resources (pulse oximetry newborn testing, 64 CSR 100),  
11 is authorized with the following amendment:

12 On page two, subdivision 5.3, by striking out the words "the  
13 closest" and inserting in lieu thereof the word "an".

14 **§64-5-2. Department of Health and Human Resources.**

15 (a) The legislative rule filed in the State Register on August  
16 31, 2012, authorized under the authority of section one, article  
17 eleven, chapter sixteen, of this code, modified by the Department  
18 of Health and Human Resources to meet the objections of the  
19 Legislative Rule-Making Review Committee and refiled in the State  
20 Register on February 5, 2013, relating to the Department of Health  
21 and Human Resources (regulation of opioid treatment programs, 69  
22 CSR 7), is authorized with the following amendment:

23 On page fourteen by striking section 7.3 and inserting a new  
24 section 7.3 to read as follows:

1 "7.3. License Fees and Inspection Costs.

2 7.3.a. All applications for an initial or renewed license  
3 shall be accompanied by a non-refundable license fee in the amount  
4 required by this rule. The annual renewal fee is based upon the  
5 average daily total census of the program. In addition to the set  
6 fee, the annual renewal fee shall be adjusted on the first day of  
7 June of each year to correspond with increases in the consumer  
8 price index. The base amounts for initial and renewal fees are as  
9 follows:

10 7.3.a.1. Initial license fee - \$250;

11 7.3.a.2. Renewal fee - fewer than 500 patients - \$500  
12 plus adjustment;

13 7.3.a.3. Renewal fee - 500 to 1,000 patients - \$1,000  
14 plus adjustment;

15 7.3.a.4. Renewal fee - more than 1,000 patients - \$1,500 plus  
16 adjustment.

17 7.3.b. An opioid treatment program shall pay for the cost of  
18 the initial inspection made by the secretary prior to issuing a  
19 license. The cost of the initial inspection is \$400, and shall be  
20 billed to the applicant by the secretary within five business days  
21 after the inspection. The cost of the initial inspection must be  
22 paid in full by the applicant before a license may be issued.

23 7.3c. The Office of Health Facility Licensure and  
24 Certification shall use the fee for increased oversight on opioid

1 treatment programs.”;

2 On page thirty-two by inserting a new subdivision 18.3.j. to  
3 read as follows:

4 “18.3.j. There shall be one (1) counselor for every forty (40)  
5 clients in the program.”;

6 On page fifty-three by striking section 30.8 and inserting a  
7 new section 30.8 to read as follows:

8 “30.8. Each opioid treatment program must provide counseling  
9 on preventing exposure to, and the transmission of, human  
10 immunodeficiency virus (HIV) disease and Hepatitis C disease for  
11 each patient admitted or re-admitted to maintenance or  
12 detoxification treatment. Services rendered to patients with HIV  
13 disease shall comply with the requirements of section 44 of this  
14 rule.”;

15 On page fifty-four by striking subdivision 31.4.a and  
16 inserting a new subdivision 31.4.a to read as follows:

17 “31.4.a. Preventing exposure to, and the transmission of, HIV  
18 disease and Hepatitis C disease for each patient admitted or  
19 readmitted to maintenance or detoxification treatment; and”;

20 On page fifty-six by striking subdivision 32.2.a and inserting  
21 a new subdivision 32.2.a to read as follows:

22 “32.2.a. The initial post-admission assessment shall consist  
23 of a comprehensive medical evaluation, which shall include, but not  
24 be limited to:

- 1           32.2.a.1. A comprehensive physical evaluation;
- 2           32.2.a.2. A comprehensive psychiatric evaluation,  
3 including mental status examination and psychiatric history;
- 4           32.2.a.3. A personal and family medical history;
- 5           32.2.a.4. A comprehensive history of substance abuse,  
6 both personal and family;
- 7           32.2.a.5. A tuberculosis skin test and chest X-ray, if  
8 skin test is positive;
- 9           32.2.a.6. A screening test for syphilis;
- 10          32.2.a.7. A Hepatitis C test;
- 11          32.2.a.8. An HIV test; and
- 12          32.2.a.9. Other tests as necessary or appropriate (e.g.,  
13 CBC, EKG, chest X-ray, pap smear, hepatitis B surface antigen and  
14 hepatitis B antibody testing).”;

15           On page seventy by striking section 37.14 and inserting a new  
16 section 37.14 to read as follows:

17           “37.14 The state authority may approve exceptional  
18 unsupervised-medication dosages, including alternative medications,  
19 on a case-by-case basis upon application for an exemption by the  
20 program physician. Any authorization for exceptions shall be  
21 consistent with guidelines and protocols of approved authorities,  
22 provided that the authority may not grant any exceptions during a  
23 calendar month which exceed three (3) exceptions or ten (10)

1 percent of the number of patients enrolled in the program on the  
2 last day of the previous month, whichever is greater.”;

3 On page seventy-three by inserting a new subdivision 38.14 to  
4 read as follows:

5 “38.14 Maintenance treatment shall be discontinued within two  
6 (2) continuous years after the treatment is begun unless, based  
7 upon the clinical judgement of the medical director or program  
8 physician and staff which shall be recorded in the client's record  
9 by the medical director or program physician, the client's status  
10 indicates that the treatment should be continued for a longer  
11 period of time because discontinuance from treatment would lead to  
12 a return to illicit opiate abuse or dependence.”;

13 On page seventy-five by striking subdivision 41.2.d.3 and  
14 inserting a new subdivision 41.2.d.3 to read as follows:

15 “41.2.d.3. When using urine as a screening mechanism, all  
16 patient drug testing shall be observed to minimize the chance of  
17 adulterating or substituting another individual's urine.”;

18 And,

19 On page eighty-one by striking subdivision 44.5.d.1. and  
20 inserting a new subdivision 44.5.d.1. to read as follows:

21 “44.5.d.1. Maintenance treatment dosage levels of pregnant  
22 clients shall be maintained at the lowest possible dosage level.”

23 (b) The legislative rule filed in the State Register on  
24 January 7, 2013, authorized under the authority of section nine,

1 article five-h, chapter sixteen, of this code, relating to the  
2 Department of Health and Human Resources (chronic pain management  
3 clinic licensure, 69 CSR 8), is authorized with the following  
4 amendments:

5 On page one, subsection 1.4, line eleven, following the number  
6 "2013.", by inserting the following words:

7 "This rule is effective upon the date specified in an  
8 emergency rule promulgated by the Department of Health and Human  
9 Resources as being the date funding for implementation of Chronic  
10 Pain Management Clinic Licensure will become available pursuant to  
11 a duly enacted appropriation bill authorizing the expenditure of  
12 funds for that purpose.";

13 On page four, subsection 3.1., by striking out all of  
14 subdivisions 3.1.a., 3.1.b., 3.1.c. and 3.1.d. and inserting in  
15 lieu thereof the following:

16 3.1.a. The primary component of the medical practice of the  
17 clinic, facility or office is treatment of chronic pain for non-  
18 malignant conditions;

19 3.1.b. More than fifty percent of patients in any one month of  
20 the prescribers are provided treatment for chronic pain for  
21 nonmalignant conditions and are prescribed, administered or  
22 dispensed tramadol, carisoprodol, opioid drug products or other  
23 Schedule II or Schedule III controlled substances for such  
24 diagnosis;

1           3.1.c. The calculation of more than fifty percent of patients  
2 will be calculated by dividing the number of unique patient  
3 encounters at the clinic, facility or office during any one month  
4 for a diagnosis of chronic nonmalignant pain and pursuant to such  
5 diagnosis of chronic nonmalignant pain were prescribed,  
6 administered or dispensed tramadol, carisoprodol, opioid drugs or  
7 other Scheduled II or Scheduled III controlled substances by the  
8 total number of all patient encounters at the clinic, facility or  
9 office during any month; and

10           3.1.d. Patients receiving tramadol, carisoprodol, opioid drug  
11 products or other Schedule II or Schedule III controlled substances  
12 for treatment of an injury or illness that lasts or is expected to  
13 last thirty days or less shall not be included in the calculation  
14 of more than fifty percent of all patients." and renumbering the  
15 remaining subdivisions;

16           On page five, by inserting a new paragraph, 3.2.i.2., to read  
17 as follows:

18           "3.2.i.2. Medical practices, clinics or offices in which a  
19 physician treats an average of 20 or fewer patients a day during  
20 any month and with any diagnosis and, in which the physician holds  
21 a Competency Certification in Controlled Substances Management.";

22           And,

1           On page thirteen, subparagraph 6.5.b.2.B., after the words  
2 "Osteopathic Specialist;" by inserting the words "hold Competency  
3 Certification in Controlled Substances Management;".

4           (c) The legislative rule filed in the State Register on August  
5 30, 2012, authorized under the authority of section four, article  
6 two-b, chapter forty-nine, of this code, modified by the Department  
7 of Health and Human Resources to meet the objections of the  
8 Legislative Rule-Making Review Committee and refiled in the State  
9 Register on January 15, 2013, relating to the Department of Health  
10 and Human Resources (minimum licensing requirements for residential  
11 child care and treatment facilities for children and transitioning  
12 adults in West Virginia, 78 CSR 3), is authorized, with the  
13 following amendment:

14           On page fifty-two, paragraph 11.2.a.3., line five, by striking  
15 out the word "Training" and inserting the word "Certification".

16 **§64-5-3. Health Care Authority.**

17           The legislative rule filed in the State Register on May 14,  
18 2012, authorized under the authority of section seven, article  
19 twenty-nine-g, chapter sixteen, of this code, modified by the  
20 Health Care Authority to meet the objections of the Legislative  
21 Rule-Making Review Committee and refiled in the State Register on  
22 July 19, 2012, relating to the Health Care Authority to promulgate  
23 a legislative rule relating to (West Virginia Health Information  
24 Network, 65 CSR 28), is authorized.

1     **§64-5-4. Bureau of Senior Services.**

2             The legislative rule filed in the State Register on August 31,  
3     2012, authorized under the authority of section fifteen, article  
4     five-p, chapter sixteen, of this code, modified by the Bureau of  
5     Senior Services to meet the objections of the Legislative Rule-  
6     making Review Committee and refiled in the State Register on  
7     January 17, 2013, relating to the Bureau of Senior Services (in-  
8     home care worker registry, 76 CSR 2), is authorized with the  
9     following amendment:

10            On page two, subdivision 4.1(i), by striking the word  
          "training" and inserting the word "certification".